

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5918 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No.
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BACHUBHAI PUNABHAI

Versus

GP METHA

Appearance:

MR SURESH M SHAH for Petitioners

MR MI HAVA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/12/97

ORAL JUDGEMENT (per C.K.Thakkar. J.)

This petition is filed by the petitioners for quashing and setting aside circulars issued by the respondent State on February 5, 1981 (Annexure-A) and December 19, 1983 (Annexure-B) respectively being unauthorised and ultra vires the provisions of Urban Land

(Ceiling and Regulations) Act, 1976 (hereinafter referred to as 'the Act'). A prayer is also made that the respondent authorities may be directed not to insist upon and/or enforce and/or implement the said circulars and may not insist upon production of building permission of a local authority before registering a sale deed.

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#. It appears that when the matter was placed before a learned Single Judge on November 22, 1985, following order was passed:

"Counsel for the petitioners withdraw his challenge and prayer with regard to circular Annexure"B" so as to enable him to file fresh petition challenging the legality and validity of Annexure"B" separately. Permission granted. In above view of the matter, the petition is confined to the challenge to Annexure "A" only. Since another petition being Spl. C.A. No.2845/81 challenging the legality and validity of circular Annexure "A" has been admitted, this petition also requires to be admitted.

Subject to the aforesaid observations and clarification, Rule. Mr.M.I.Hava waives service on behalf of respondents. Rule. To be heard with Special Civil Appln. No.2845/1981."

#. From the order, it clearly appears that at the time of admission, legality of circular, Annexure "B" was given up. Legality of Annexure "A", however, was challenged. Another petition being Spl. Civil Appln. No.2841 of 1981 was admitted and pending, the learned Single Judge passed the order to admit this petition also. It was ordered to be heard alongwith that matter (SCA No.2845 of 1981).

#. We are told at the bar by Mr.Shah, learned counsel for the petitioner that other petition came up for final hearing and it was dismissed by an order dated March 4, 1993. This petition was not placed alongwith SCA No.2841 of 1981. When the present petition was placed for hearing, the learned Single Judge found that it was in the nature of public interest litigation and hence, it was ordered to be placed before an appropriate court. The order passed on June 28, 1996 reads thus:

"This is in the nature of a public interest litigation as the Circulars at Annexures A and B to this petition are challenged on behalf of land

holders by bond writer's in Rajkot. It may, therefore, be placed before an appropriate court taking up that public interest litigation."

#. So far as the legality and validity of Annexure 'A' is concerned, Mr.S.M.Shah, learned counsel for the petitioner, did not press challenge. Moreover, the learned Single Judge (Mr.R.A.Mehta, J.) has also considered the legality of the said circular in Spl. Civil Appln. No.2845 of 1981 and upheld its validity by judgment and order dated March 4, 1993. We are of the view that in this circumstances, the challenge to Annexure "A" does not survive.

#. Once it is held that the provisions contained in circular Annexure 'A' are legal and valid, it is open to the authorities to insist upon compliance of requirements laid down in the said circular. It, therefore, cannot be said that the authorities have no power to direct compliance with the conditions mentioned therein.

#. Mr.Shah, however, urged that even if it is conceded that the authorities can insist upon compliance with provisions of circular Annexure "A", when necessary form is filled in and declaration is made, the competent authority has to take decision one way or the other and that it is not open to them to keep the application pending. If necessary conditions have not been complied with, the authorities may reject the application, but they have to pass an appropriate order.

#. We find force in the arguments of of Mr.Shah that it enjoins the authority to take a decision and the matter cannot be kept pending for unreasonably long period.

#. It is, no doubt, true that in a representation made by petitioner no.1 to Sub-Registrar, Rajkot, at Annexure-E dated October 1,1985, a statement was made that the Sub-Registrar insisted upon the production of evidence regarding construction. Mr.Shah stated that nothing was given in writing and it was merely an oral instruction. If the authority is of the view that the necessary details were not filled in and/or evidence and particulars are not supplied, an appropriate decision can be taken, but the authority will have to pass an order one way or the other.

##. Though the matter is of 1985, nobody appears on behalf of the respondents. Appearance of M/s BKG and M.I.Hava is shown. They do not appear. Government

Pleader also does not appear in the matter. In these circumstances, we have to pass appropriate order after hearing the learned counsel for the petitioner.

##. For the foregoing reasons, in our opinion, only direction which can be issued to the authority is to decide the case of the petitioner in accordance with the circulars issued by them. According to the petitioners, the necessary forms have been filled in and materials have been supplied. The authorities will take an appropriate decision in accordance with the law as expeditiously as possible preferably by April 30, 1998. Rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar, J.)

(R.P.Dholakia, J.)